

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 7071 and 8587.1 of the Fish and Game Code and to implement, interpret or make specific sections 7071, 7652, 8585.5 and 8587.1 of said Code, proposes to amend subsection 150.06(c), Title 14, California Code of Regulations, relating to the commercial take of cabezon, greenlings and sheephead.

Informative Digest/Policy Statement Overview

Existing language of Section 150.06 (c), Title 14, California Code of Regulations (CCR), states that commercial seasons for cabezon, greenlings and sheephead (CGS) for all areas of the state are to be set annually in accordance with nearshore rockfish seasons established in Federal regulations for the area from 40°10' N. lat. (near Cape Mendocino) to the to the US/Mexican border. In 2003, commercial nearshore rockfish regulations for this area allowed fishing for 10 months of the year, with the two month closure period set as the months of March and April (Table 1).

At the September 2003 Pacific Fishery Management Council meeting, actions were taken that will result in commercial nearshore rockfish seasons for 2004 to be open in some areas of the state during some months, and closed in others. Therefore, from the regulations (Section 150.06, Title 14, CCR), it is not clear whether commercial CGS seasons are in fact open or closed. From the geographic area from 34°27' N. lat. (Point Conception) to the US/Mexican border (referred to as the southern area), commercial shallow and deeper nearshore rockfish fisheries are closed in January and February, while in the area from 34°27' N. lat. to 40°10' N. lat. (referred to as the central area); the closure period is in March and April as in 2003.

Since the closure periods are no longer consistent for the region from 40°10' N. lat. to the US/Mexican border, the existing Title 14 language must be changed to specify that the CGS commercial season is to be consistent with shallow and deeper nearshore rockfish commercial rockfish seasons in each particular geographic region. This strategy of aligning the CGS seasons with that of nearshore rockfish has been a consistent practice of the Fish and Game Commission in regulatory actions since 2002, based on concerns for bycatch of rockfish which would occur in targeted CGS fisheries if rockfish were prohibited from retention at that time.

Additionally, the proposed regulation changes require the Commission to determine whether the commercial CGS fishery shall have a closure period in the area from 40°10' N. lat. to the California/Oregon border (referred to as the northern area). This area does not have a closure period for nearshore rockfish. However, in 2003, the Commission adopted regulations which authorized commercial CGS fishing for a length of 10 months throughout the state, so that one area would not have more opportunity than another.

Therefore, the Commission may select either not to enact a CGS closure in this area, or to enact a closure for the months of March and April, which would be consistent with the 2-month closure in the central area which is immediately adjacent. While the first option would align the CGS seasons with rockfish in the northern area, it would allow the northern fishery additional fishing opportunity for CGS compared to the fishery to the south. Under the

second alternative, fishing for CGS would be closed during March and April when fishing would be allowed for nearshore rockfish, and all areas of the state would have equal time on the water to access CGS fisheries.

TABLE 1

2003 Commercial CGS and Nearshore Rockfish Regulations

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabazon/ Greenlings/Sheephead	March-April
	Minor Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabazon/ Greenlings/Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabazon/ Greenlings/Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April

2004 Commercial CGS and Nearshore Rockfish Regulations

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabazon/ Greenlings/Sheephead	EITHER [March-April] OR [None]
	Minor Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabazon/ Greenlings/Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabazon/ Greenlings/Sheephead	January-February
	Shallow and Deeper Nearshore Rockfish	January-February

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, California, on Friday, November 7, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Friday, December 5, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before November 28, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than December 5, 2003, at the hearing in Sacramento, CA. Written comments, including e-mail comments, must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. Mr. Fred Wendell, Nearshore Ecosystem Coordinator, Department of Fish and Game, Marine Region, (805) 772-1714, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fq_comm/.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Each permittee, buyer, and processor is considered a small business.

This regulatory action simply seeks to shift various months in which commercial CGS fishing activities may or may not occur, but the amount of allowable fishing time for

each permittee in the southern and central areas of the state will not change as a result of the proposed regulations. For the northern area, if the Commission selects to allow for a 12-month CGS fishery instead of the currently authorized 10-month season, commercial nearshore fishermen in that area might receive some minor benefit from the opportunity to increase their time on the water. However, the degree of this benefit cannot be determined due to inability to project weather and fishing conditions or the competing impact of other regulations such as trip limits and harvest guidelines, which are likely to have a greater overall effect on a permittee's fishing success.

(b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: October 7, 2003

Robert R. Treanor
Executive Director